**KEKATONG SDN BHD**

**v.**

**BUMIPUTRA-COMMERCE BANK BHD & ANOR**

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[CIVIL SUIT NO: S6-22-85-2002]
11 MAY 2002

***STATUTORY INTERPRETATION:*** *Interpretation of statutes - Duty of court - Wording of statute clear and unambiguous - Whether incumbent upon court to interpret statute literally - Pengurusan Danaharta Nasional Act 1998, s. 72*

***STATUTORY INTERPRETATION:*** *Construction of statutes - Conflicting provisions - Whether specific provision prevails over general provision - Whether later provision prevails over earlier provision*

***LIMITATION:*** *Charge - Action for payment of debt - Whether action statute-barred*

This was the plaintiff's application for an interlocutory injunction restraining the second defendant from exercising its rights under the Pengurusan Danaharta Nasional Bhd Act 1998 ('the Act') in respect of a charge of certain charged land. The plaintiff contended that since the order of sale for the charged land granted by the High Court dated 7 September 1986 against the plaintiff had been overturned by the Court of Appeal on 9 March 1998, the subsequent action filed against it on 13 October 1998 should be barred by virtue of the provisions of the Limitation Act 1953.

**Held:**

**[1]** The wording of s. 72 of the Act is very clear and contains no ambiguity as to its meaning and intention, and in the absence of any ambiguity, it was incumbent upon this court to interpret it literally. On the clear provision of s. 72 of the Act, this court had no power to issue any order of injunction against Pengurusan Danaharta Nasional Bhd ('Danaharta'). Therefore, this court had no power to entertain the plaintiff's application for an injunction against the second defendant as it was a wholly-owned subsidiary of Danaharta. (p 178 c-d)

**[2]** According to the rule of construction, where there exists two provisions of written law in conflict with each other, one general and the other specific, then the specific provision excludes the operation of the general

provision. Hence, the specific provision of the Act prevailed over the provision of the Limitation Act 1953, which was general in nature. Furthermore, the Limitation Act 1953 came into effect in 1953 whereas the Danaharta Act came into force in 1998, and in case of conflict between two written laws, the one which came into effect later will override the earlier law. (p 179 f-h)

*[Application dismissed.]*

**Legislation referred to:**
National Land Code 1965, form 16D
Pengurusan Danaharta Nasional Berhad Act 1998, ss. 14(4)(k), 57(1), 60, 72

*For the plaintiff - Dato' Bastian Vendargon (T Gunaseelan); M/s Jayaraman, Ong & Co*
*For the 2nd defendant - Tommy Thomas; M/s Tommy Thomas*

*Reported by Suresh Nathan*

**JUDGMENT**

**Azmel Maamor J:**
Under encl. 12 the plaintiff in this case applied for an interlocutory injunction to restrain the 2nd defendant from exercising its rights under the Pengurusan Danaharta Nasional Bhd Act 1998 or pursuant to the vesting order dated 7 May 1999 in respect of the charges on lands held under Lots No. 267, 268, 269 and 271 under Grant No. G19450, G19451, G19452 and G19453 in the Mukim and District of Kuala Lumpur ("the said charged land").

The background of this case is as follows. On 28 May 1983 Bank Bumiputra Malaysia Bhd ('the bank'), the predecessor of the 1st defendant, granted a loan amounting to RM30 million (in US Dollar equivalent) to one Kredin Sdn Bhd on security by third party charge created by Kekatong Sdn Bhd over the said charged land in favour of the bank. Because Kredin had committed default in repayment of the loan judgment was entered in favour of the bank against Kredin on 1 April 1986 for the principal sum of US$17,771,319.06 together with interest thereon, *vide* Kuala Lumpur Civil Suit No. S23-436-86.

Around the same time the bank also commenced foreclosure proceedings against the plaintiff. And on 7 September 1986 an order for sale was granted by the High Court against the plaintiff for the sale of the said charged land. The plaintiff filed an appeal to the Court of Appeal. Almost 12 years later, on 9 March 1998, the Court of Appeal gave an order setting aside the order for sale granted by the High Court on the sole ground that no proper or effective service of demand was made by the bank to the plaintiff prior to the commencement of the foreclosure proceedings in the High Court.

Consequent to the order of the Court of Appeal, on 13 October 1998 the bank issued a notice in Form 16D of the National Land Code 1965 against the plaintiff demanding payment of the sum of US$57,790,482.20 which represented Kredin's indebtedness to the bank as at 30 April 1998.

On 7 May 1999 the 2nd defendant acquired from the bank by way of statutory vesting, the loan and charge pursuant to the provisions of the Pengurusan Danaharta Nasional Berhad Act 1998. The vesting certificate was issued on 31 July 1999 and lodged with the registrar of companies on 4 August 1999.

The judgment against Kredin granted by the High Court 1 April 1986 confirms the indebtedness of Kredin to the bank. And pursuant to cls. 2 and 15 of the charges the plaintiff is deemed to have agreed to pay the bank the indebtedness of Kredin upon demand being made on the plaintiff on 13 October 1998.

On the basis of the facts as stated above and by virtue of the provisions of the Pengurusan Danaharta Nasional Bhd Act 1998, the rights and remedies originally vested in the bank under the loan agreement and the charge against the plaintiff were, on 7 May 1999, vested in the 2nd defendant. Such being the circumstances, the position of the 1st defendant in this action has become dormant and literally inactive as its powers have been taken over by the 2nd defendant.

Before me, the plaintiff sought for an order of interlocutory injunction to restrain the 2nd defendant from exercising its rights under the Danaharta Act or pursuant to the vesting certificate dated 7 May 1999 in respect of the charge of the said charged land. It is not disputed that the 2nd defendant is a wholly owned subsidiary of Pengurusan Danaharta Nasional Bhd and by virtue of s. 60 of the Danaharta Act the 2nd defendant also enjoys all the rights as enjoyed by the parent company under the Danaharta Act, including the provisions of s. 72 of the Danaharta Act.

In my view before I deal with the merits of the plaintiff's application, it is essential for me to consider the applicability and relevance of s. 72 of the Danaharta Act *vis-a-vis* the plaintiff's application.

It reads as follows:

> 72. Limits on the grant of orders of court.
>
> Notwithstanding any law, an order of court cannot be granted:
>
> (a) which stays, restrains or affects the powers of the Corporation, Oversight Committee, Special Administrator or Independent Advisor under the Act;

(b) which stays, restrains of affects any action taken, or proposed to be taken, by the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;

(c) which compels this Corporation, Oversight Committee, Special Administrator, or Independent Advisor to do or perform any act,

and any such order, if granted shall be void and unenforceable and shall not be the subject of any process of execution whether for the purpose of compelling obedience of the order or otherwise.

This s. 72 of Danaharta Act came into force on 1 September 2000. The wording of s. 72 is very clear and contains no ambiguity as to its meaning and intention. In the absence of any ambiguity it is incumbent upon this court to give it a literal meaning. On the clear provisions of this s. 72 the power of this court to issue any order of injunction against Pengurusan Danaharta Nasional Bhd which includes the 2nd defendant, being the wholly owned subsidiary of Danaharta is taken away. It therefore means this court has no power to entertain the plaintiff's application for an injunction. On this ground alone the plaintiff's application must fail.

Notwithstanding my decision on the lack of power of this court to grant injunction against Danaharta, I have also proceeded to consider the issue on the law of limitation on which ground the plaintiff's case relied heavily. It was contended by the plaintiff that the order of sale was granted by the High Court dated 7 September 1986 against the plaintiff for the sale of the said charged land had been overturned by the Court of Appeal on 9 March 1998. The plaintiff therefore argued that the subsequent action filed by the bank on 13 October 1998 against the plaintiff should be barred by limitation by virtue of the provisions of the Limitation Act 1953.

As I have already mentioned above, by virtue of the vesting certificate the rights and remedies formerly vested with the bank under the loan agreement and charge against the plaintiff are now vested in the 2nd defendant with effect from 7 May 1999. That being the situation the issue that needs to be determined now is whether the provisions of the Limitation Act 1953 can be invoked against the 2nd defendant. In other words the question to be decided is whether the Limitation Act can override the provisions of the Danaharta Act in respect of laws on limitation. This requires the examination of the relevant provisions of the Danaharta Act. The first relevant provision is s. 14(4)(k). It states as follows:

(4) Without prejudice to sub-section (1), (2) or (3) in relation to an asset vested in the Corporation:

...

(k) *no provision in any law or agreement limiting or prohibiting the right of the seller or requiring any consent to assign, sell, dispose or transfer such asset shall have any application or effect in respect of any acquisition or disposition by the Corporation*, except that a disposition of such asset by the Corporation shall be subject to the approval of the relevant regulatory body or relevant State Authority having jurisdiction over such disposition. (emphasis added)

Section 57 of the Danaharta Act also provides as follows:

57.(1) Notwithstanding any other law and in addition to any other power of the Corporation may have under any contract or any other law, the Corporation or the acquiree as holder of any security whether as Chargee, mortgagee, assignee *lieu*-holder or otherwise, over any property shall be entitled:

(a) to dispose of such property or any part of such property by way of private treaty.

In my view from the wordings of s. 14(4)(k) and also s. 57(1) of the Danaharta Act it is clearly the intention of the Legislature to enact the Danaharta Act to allow its application overriding the provisions of existing laws including the Limitation Act 1953.

Needless to say, there exists a conflict between the provisions of the Limitation Act 1953 and the provisions of the Danaharta Act of 1998 in respect of the limitation law. In the light of such conflict can it be argued that the provisions of the Limitation Act can prevail over the provisions of the Danaharta Act. In my considered opinion it cannot be done. Under the circumstances the provisions of the Danaharta Act will prevail over the Limitation Act. My reasons are as follows:

Firstly, according to the rule of construction where there exist two provisions of written law in conflict with each other, one general and the other specific, then the specific or special provision excludes the operation of the general provision. The relevant provisions of the Danaharta Act are specific whereas the provisions of the Limitation Act are general in nature.

Secondly, in case of conflict between two written laws, the one which came into effect later will override the earlier law. The Limitation came into effect in 1953 whereas the Danaharta Act came into force in 1998.

In the light of the above reasons I ruled that the provisions of the Danaharta Act prevail over the provisions of the Limitation Act since the provisions of the Danaharta Act are specific provisions and also the Danaharta Act came into effect very much later than the coming into force of the Limitation Act.

Therefore, since the action of the 2nd defendant cannot be subjected to the provisions of the Limitation Act on which ground the plaintiff had put sole reliance it is my conclusion that the plaintiff's chance of success in this application would be very slim.

In the light of the above circumstances I therefore ruled that the plaintiff's application be dismissed with costs.